Tier 3 destinations are those having a Composite Theoretical Performance (CTP) greater than 2,000 Millions of Theoretical Operations Per Second (Mtops), but less than or equal to 7,000 Mtops.

(3) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR. Exports and reexports under this License Exception may not be made to known military end-users or to known military end-uses or known proliferation end-uses or end-users defined in part 744 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to military end-users or end-uses and defined proliferation end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) *Restrictions.* (1) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan or Syria, except commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(2) Computers eligible for License Exception CTP may not be reexported/retransferred without prior authorization from BXA i.e., a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6(a)(ii) of the EAR.

(f) *Recordkeeping requirements.* In addition to the recordkeeping requirements in part 762 of the EAR, you must keep records of each export under License Exception CTP. These records will be made available to the U.S. Government on request. The records must include the following information:

(1) Date of shipment;

(2) Name and address of the end-user and each intermediate consignee;

(3) CTP of each computer in shipment;

(4) Volume of computers in shipment;

(5) Dollar value of shipment; and

(6) End-use.

[61 FR 64276, Dec. 4, 1996, as amended at 61 FR 67449, Dec. 23, 1996]

§ 740.8 Key management infrastructure.

(a) *Scope.* License Exception KMI authorizes the export and reexport of certain encryption software and equipment.

(b) *Eligible software and equipment—*(1) *Recovery encryption items.* Eligible items are recovery encryption software and equipment controlled under ECCNs 5D002 or 5A002 made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(1) of this section.

(2) *Non-recoverable encryption items.* Eligible items are 56-bit DES or equivalent strength non-key recovery software and equipment controlled under ECCNs 5D002 or 5A002 made eligible as a result of a one-time BXA review. You may initiate this review by submitting a classification request for your product in accordance with paragraph (d)(2) of this section.

(c) *Eligible destinations.* License Exception KMI is available for all destinations, except Cuba, Libya, North Korea, Iraq, Iran, Syria, and Sudan.

(d) *Additional eligibility requirements—*(1) *Recovery encryption items.* Classification requests for recovery encryption software and equipment must meet the following criteria:

(i) *Key escrow and key recovery products.* (A) Key escrow and key recovery products must meet the criteria identified in Supplement No. 4 to part 742 of the EAR;

(B) Key recovery agents must meet the criteria identified in Supplement No. 5 to part 742 of the EAR;

(C) Key recovery agents must implement the security policies and key escrow/key recovery procedures identified in Supplement No. 5 to part 742 of the EAR;

(D) Key recovery agents must comply with all applicable EAR Record keeping requirements, including record retention requirements; and

(E) Key recovery agents must carry out the key holding obligations as approved by BXA, and any violation of any of the key holding obligations shall also constitute a violation of the EAR. Note that the key recovery agent's continuing compliance with key recovery agent requirements and key safeguard procedures is a condition for use of License Exception KMI. The exporter or reexporter, whether that person is the key recovery agent or not, must submit a new classification request to BXA if there are any changes (e.g., termination, replacement, additions) to the previously approved key recovery agent.

(ii) *Other recoverable encryption items.* Requests for one-time review of recoverable products which allow government officials to obtain, under proper legal authority and without the cooperation or knowledge of the user, the plaintext of the encrypted data and communications will receive favorable consideration.

(2) *Non-recoverable encryption items.* Upon approval of your classification request submitted in accordance with this paragraph (d)(2), you will become eligible to use License Exception KMI for six months. In order to continue using this License Exception, you must renew your eligibility by submitting the progress report described in paragraph (d)(2)(ii) of this section. Classification requests for 56-bit DES or equivalent strength non-key recovery software and equipment must meet the following criteria:

(i) Initial request must be submitted with a business plan that explains in detail the steps the applicant will take during the two-year transition period according to the criteria identified in Supplement No. 7 to part 742 of the EAR;

(ii) Renewal for use of this License Exception is contingent upon progress reports sent to BXA every six months and the applicant's adherence to benchmarks and milestones as set forth in the plan submitted for the initial classification request.

(iii) Applicants may inform their authorized distributors that an approved classification and plan has been granted to them and the distributors' authority to so export or reexport will be for a time period ending on the same day the applicant's authority to export or reexport ends.

(e) *Reporting requirements.* (1) You must provide semiannual reports to BXA identifying:

(i) Ultimate consignee; specific end-user name and address, if available; and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than March 1 and no later than September 1 of any given year.

[61 FR 68579, Dec. 30, 1996]

§ 740.9 Temporary imports, exports, and reexports (TMP).

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports—* (1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees

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